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NEW JERSEY DEPARTMENT OF

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LABOR AND WORKFORCE DEVELOPMENT
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State of New Jersey

Department of Labor and

Workforce Development

PO Box 110

Trenton, New Jersey

08625-0110

RE: DIVISION OF TEMPORARY DISABILITY INSURANCE

Payment of Benefits

Proposed New Rule: N.J.A.C. 12:18-1.8

Attached please find the above-referenced matter which was published in the August 21, 2006 *New Jersey Register*.

If you have any questions, please contact David Fish, Regulatory Officer at (609) 292-2789.

(a)

DIVISION OF TEMPORARY DISABILITY INSURANCE

Payment of Benefits

Proposed New Rule: N.J.A.C. 12:18-1.8

Authorized By: David J. Socolow, Acting Commissioner,
Department of Labor and Workforce Development.

Authority: N.J.S.A. 43:21-25 et seq.; specifically, N.J.S.A. 43:21-65.

Calendar Reference: See Summary below for explanation of
exception to calendar requirement.

Proposal Number: PRN 2006-274.

A **public hearing** regarding the proposed new rule will be held on the
following date at the following location:

Monday, September 18, 2006

10:00 A.M. to 12:00 Noon

New Jersey Department of Labor and Workforce Development

John Fitch Plaza

13th Floor Auditorium

Trenton, New Jersey

Please call the Office of Legal and Regulatory Services at (609) 292-
2789 if you wish to be included on the list of speakers.

Submit written comments by October 20, 2006 to:

David Fish, Regulatory Officer

Office of Legal and Regulatory Services

P.O. Box 110, 13th Floor

Trenton, New Jersey 08625-0110

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The agency proposal follows:

Summary

The Department is proposing a new rule at N.J.A.C. 12:18-1.8, which would establish that all temporary disability benefit checks shall be made payable to the claimant, with only three exceptions, namely, (1) when the claimant is deceased, (2) when the claimant is a minor, or (3) when the claimant is an individual for whom the Director of the Division of Temporary Disability Insurance has appointed a representative as disability benefit beneficiary. The proposed new rule would also establish that all temporary disability benefit checks shall be delivered directly to the claimant, with only one exception, namely, that temporary disability checks (made payable to the claimant) may be delivered to the claimant's employer on the condition that (1) the employer has advanced monies to the claimant in an amount equal to or in excess of the temporary disability benefits to which the claimant is entitled under the State or private plan, and (2) the claimant has knowingly and voluntarily signed a written agreement authorizing the delivery of his or her temporary disability benefit check to the employer.

N.J.S.A. 43:21-27(f) defines the term "disability benefits" to mean, "any cash payments which are payable to a covered individual pursuant to this act [the Temporary Disability Benefits Law, N.J.S.A. 43:21-25 et seq.]" (emphasis added). N.J.S.A. 43:21-53 states in pertinent part that, "... benefits under the State plan and for any disability during unemployment as provided by section 43:21-4(f) or under an approved private plan shall not be assignable or subject to levy, execution, attachment or other process for satisfaction of debts." Nevertheless, it has come to the attention of the Department that certain private plan temporary disability carriers are, at the request of employers, issuing temporary disability checks payable to employers and delivering those checks directly to the employers, without the consent of the claimants. Evidently, it is the belief of the employers and carriers engaged in this practice that when an employer has advanced monies to a claimant in an amount equal to or in excess of the temporary disability benefits to which the claimant is entitled under the Temporary Disability Benefits Law, the temporary disability benefit check should be made payable in full to the employer and should be delivered directly to the employer, without involving the claimant, in order to discharge the employee's debt to the employer. On the contrary, it is the Department's belief that the practices of (1) making temporary disability benefit checks payable to employers, and (2) delivering temporary disability benefit checks directly to employers without the consent of the claimants, are inconsistent with both the spirit and the letter of the Temporary Disability Benefits Law, N.J.S.A. 43:21-25 et seq. Consequently, in order to put an end to this practice and, further, so as to eliminate any possible confusion regarding the Department's expectations under the Temporary Disability Benefits Law vis-à-vis the payment of benefits to claimants, the Department is proposing the new rule at N.J.A.C. 12:18-1.8, described in detail below.

Proposed new N.J.A.C. 12:18-1.8(a) would require that the Division of Temporary Disability Insurance (for State plan and disability during unemployment) or the insurer (for private plan), to make all temporary disability benefit checks payable to the claimant, with certain exceptions.

Proposed new N.J.A.C. 12:18-1.8(b) would require that the Division of Temporary Disability Insurance (for State plan and disability during unemployment) or the insurer (for private plan), deliver all temporary disability benefit checks directly to the claimant, with certain exceptions.

Proposed new N.J.A.C. 12:18-1.8(c) would state that the Division of Temporary Disability Insurance (for State plan and disability during unemployment) or the insurer (for private plan), may deliver temporary disability benefit checks to the employer, which temporary disability benefit checks shall have been made payable to the claimant, only when all of the following conditions have been met:

1. The employer has advanced monies to the claimant in an amount equal to or in excess of the temporary disability benefits to which the claimant is entitled under the State or private plan, and

2. The claimant has knowingly and voluntarily signed a written agreement authorizing the delivery of his or her temporary disability benefit check to the employer.

As the Department has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirements pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed new rule at N.J.A.C. 12:18-1.8 would have a positive social impact in that it would eliminate any possible confusion with regard to the responsibilities of insurers and employers, relative to the payment of temporary disability benefits to claimants. Moreover, the proposed new rule would ensure that all temporary disability benefit checks are made payable to claimants, as required by law, and that under no circumstances would a temporary disability benefit check be delivered directly to a claimant's employer without the express, written, knowing and voluntary consent of the claimant. It would be entirely appropriate under the proposed new rule for an employer who intends to advance monies to a claimant in an amount equal to or in excess of the temporary disability to which the claimant is entitled, to obtain written consent from the claimant as a precondition to advancing the claimant the subject monies. It is the Department's belief that the proposed new rule at N.J.A.C. 12:18-1.8 strikes the appropriate balance between the needs of insurers, employers and claimants.

Economic Impact

The proposed new rule at N.J.A.C. 12:18-1.8 would have no economic impact in that it would not affect the amounts of monies in temporary disability benefits paid by insurers or received by claimants, but rather, would simply make clear to all participants, including insurers, employers and claimants, to whom the benefit checks must be made payable, to whom those checks must be delivered and under what circumstances delivery of benefit checks (payable to claimants) may be made directly to employers.

Federal Standards Statement

The proposed new rule is governed by N.J.S.A. 43:21-25 et seq., and is not subject to any Federal standards or requirements. Therefore, a Federal standards analysis is not required.

Jobs Impact

The proposed new rule would have no impact on either the generation or loss of jobs.

Agriculture Industry Impact

The proposed new rule would have no impact on the agriculture industry.

Regulatory Flexibility Statement

The proposed new rule would impose no reporting, recordkeeping or other compliance requirements on small businesses as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Furthermore, as indicated within the Economic Impact above, it is not anticipated that the proposed new rule would have any potential adverse economic impact on businesses, including small businesses.

Smart Growth Impact

The proposed new rule would not have an impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan.

Full text of the proposed new rule follows:

12:18-1.8 Payment of Benefits

(a) The Division (for State plan and disability during unemployment) or the insurer (for private plan), shall make all temporary disability benefit checks payable to the claimant, except under the following circumstances:

1. As prescribed under N.J.S.A. 43:21-42(b), relative to the payment of benefits due a deceased claimant;
2. As prescribed under N.J.S.A. 43:21-42(c), relative to the payment of benefits due a minor; or

3. As prescribed under N.J.S.A. 43:21-42(d), relative to the payment of benefits due an individual for whom the Director has appointed a representative as disability benefit beneficiary.

(b) The Division (for State plan and disability during unemployment) or the insurer (for private plan), shall deliver all temporary disability benefit checks directly to the claimant, except under the circumstances set forth in (c) below.

(c) The Division (for State plan and disability during unemployment) or the insurer (for private plan), may deliver temporary disability benefit checks to the employer, which temporary disability benefit checks shall have been made payable to the claimant pursuant to (a) above, only when all of the following conditions have been met:

1. The employer has advanced monies to the claimant in an amount equal to or in excess of the temporary disability benefits to which the claimant is entitled under the State or private plan, and

2. The claimant has knowingly and voluntarily signed a written agreement authorizing the delivery of his or her temporary disability benefit check to the employer.
